OD – 29

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/16/2021

COMMISSIONER OF CENTRAL EXCISE CALCUTTA – 1
COMMISSIONERATE
VS.
M/S. EMCO GENERAL PLASTIC INDUSTRIES PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 14, 2022.

[Via Video Conference]

The Court : This appeal by the revenue filed under Section 35 H of the Central Excise Act, 1944 (the Act) is directed against the order dated 16.06.2000 passed by the Customs Excise and Gold (Control) Appellate Tribunal, Calcutta (Tribunal) in Appeal No. E/R-73/1998.

The appeal was entertained to decide the following substantial question of law :

> Whether the learned Tribunal has correctly applied on the facts and circumstances of the case the ratio of the decision of the Hon'ble Supreme Court reported in 1999 (113) ELT 353 SC or not?

None appears for the appellant.

We have perused the order passed by the Tribunal and we find that the dispute raised pertains to classification of the products manufactured and cleared by the respondent/assessee. If such is the undisputed position, then the appeal filed by the revenue before this Court will not be maintainable in the light of the embargo under Section 35 (G) of the Act.

Therefore, the appeal stands dismissed on the ground that it is not maintainable.

However, it is open to the appellant/department to proceed in accordance with law.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH